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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
) MUR 5657
David Wittig and Douglas Lake)

SENSITIVE

GENERAL COUNSEL'S REPORT # 1¹

I. **ACTIONS RECOMMENDED:** Find probable cause to believe that (1) David Wittig violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by consenting to prohibited corporate facilitation of contributions; (2) Douglas Lake violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by consenting to prohibited corporate facilitation of contributions

II. **BACKGROUND**

David Wittig and Douglas Lake were the top two officers at Westar Energy, Inc., when Westar facilitated \$39,900 in contributions to 21 federal political committees. Wittig and Lake consented to the facilitation.

On October 19, 2004, the Commission found reason to believe that Westar and four Westar executives, Wittig, Lake, Carl M. Koupal, Jr., and Douglass Lawrence, violated the Federal Election Campaign Act of 1971, as amended ("the Act"), specifically, 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.6(b)(2) and 114.2(f).² See MUR 5573. The Commission also found that Westar's outside lobbyists, Governmental Strategies, Inc. ("GSI") and Richard Bornemann,

¹ This is the first General Counsel's report in MUR 5657, which was opened when the Commission severed these respondents from MUR 5573. MUR 5573 involved the other Westar respondents. The First General Counsel's Report in MUR 5573 also addresses Wittig and Lake's potential liability.

² Although the Commission initially found reason to believe that Wittig and Lake violated 11 C.F.R. § 110.6(b)(2), which applies to conduits or intermediaries, subsequent investigation revealed that Wittig and Lake did not receive and forward earmarked contributions to candidate committees, and, thus, this regulation is not applicable to them.

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1 violated 11 C.F.R § 114.2(f). *See id.* Earlier this year, the Commission accepted conciliation
2 agreements with Westar, Koupal, Lawrence, and Bornemann in connection with the prohibited
3 facilitation, and closed the file as to GSI. *See id.* On May 10, 2004, the Commission severed
4 Wittig and Lake from MUR 5573 and opened MUR 5657 as to
5 them. On September 1, 2005, this Office served Wittig and Lake General Counsel's Briefs
6 ("Wittig Brief" and "Lake Brief" or collectively "GC Briefs"), incorporated herein by reference,
7 to their counsel. The GC Briefs set forth the factual and legal basis upon which this Office is
8 prepared to recommend that Wittig and Lake violated the Act.

9 After receiving extensions, Wittig and Lake submitted responses to the GC Briefs. Wittig
10 submitted a two-paragraph brief (*see* Attachment 1) stating that he stands by his response to the
11 reason to believe findings. *See* MUR 5573, Wittig Response, January 18, 2005 ("Wittig
12 Response"). In addition, his brief incorporates Vice Chairman Toner's Statement of Reasons in
13 the Westar matter, in which Vice Chairman Toner stated that he did not agree that Westar
14 facilitated contributions. Wittig further requests that the Commission stay this matter pending
15 resolution of the criminal case against him.³ Lake's one-paragraph "brief" (*see* Attachment 2)
16 merely states that Lake denies any liability and stands by the legal arguments he made in his
17 response to the Commission's reason to believe findings. *See* MUR 5573, Lake Response,
18 January 21, 2005 ("Lake Response").

³ At the time the briefs were served, Wittig and Lake were defending themselves against criminal charges in Kansas. The 40-count criminal charges related to a variety of corporate fraud abuses they allegedly committed while at Westar, including money laundering, wire fraud, and circumvention of internal controls. An earlier attempt in 2004 to convict Wittig and Lake resulted in a December mistrial. On September 12, 2005, a new jury convicted Wittig on 39 counts and Lake on 30, with a forfeiture count still to be determined. Sentencing is scheduled for January 9, 2006. None of the 40 counts involved the campaign contributions at issue in this matter. This Office does not recommend postponing a decision about whether there is probable cause to believe Wittig violated the Act. If the Commission finds probable cause, this Office will take into account Wittig's criminal proceedings in scheduling deadlines.

As discussed below and in the GC Briefs, the factual record shows that Wittig and Lake consented to Westar collecting and forwarding contributions to candidate committees. *See* GC Briefs, pp. 2-8. Accordingly, for the reasons discussed below and in the GC Briefs, this Office recommends that the Commission find probable cause to believe that Wittig and Lake violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by consenting to prohibited corporate facilitation of contributions. Finally, based on the approaching statute of limitations and the slim possibility of conciliation this Office recommends that the Commission grant contingent suit authority.⁴

III. FACTUAL SUMMARY

Westar is an electric utility company incorporated in Kansas and headquartered in Topeka, Kansas. *See* Westar Energy, Inc., Conciliation Agreement ("Westar CA"), Part IV, ¶ 1. David Wittig was the Vice President of Corporate Strategy at Westar from 1995 to 1998 and its President and CEO from 1998 through November 7, 2002. *See id.* Douglas Lake was Westar's Vice President for Corporate Strategy from 1998 through December 6, 2002. *See id.* Douglass Lawrence was Westar's Vice President of Government Affairs from late 2001 until he voluntarily resigned at the end of 2002. *See* Douglass Lawrence Conciliation Agreement ("Lawrence CA"), Part IV, ¶ 1. Carl M. Koupal, Jr., was employed at Westar from March 16, 1992 through October 31, 2001, and served as Executive Vice President and Chief Administrative Officer at the times relevant herein. *See* Carl M. Koupal, Jr., Conciliation Agreement ("Koupal CA"), Part IV, ¶ 1.

GSI is a lobbying and consulting firm incorporated in Virginia with its principal place of business in Oakton, Virginia. *See* Richard Bornemann Conciliation Agreement ("Bornemann

⁴ The statute of limitations on 2000 corporate contribution activity, which we learned about in November 2003, begins to expire in late December 2005.

CA”), Part IV, ¶ 2. GSI has worked as one of Westar’s lobbyists since March 1, 2000. *See id.* Richard Bornemann, one of GSI’s lobbyists, provided lobbying and consulting services to Westar during times relevant herein. *See id.*

A. September 2000 Solicitations

Shortly after the August 2000 primary election in Kansas, Wittig asked Koupal to create a proposed list of candidates for the top Westar executives (the “Executive Council”), including Wittig and Lake, to support in the upcoming general election. *See Koupal Affidavit*, ¶ 4 (Attachment 3). Wittig also asked Koupal to propose suggested contribution amounts for the six Executive Council members. *See id.* At around the same time, at a regularly held weekly staff meeting of the Executive Council that Lake attended, Wittig announced that Koupal would be creating such a chart and that it was Wittig’s desire for Westar to support these candidates.⁵ *See id.*, ¶ 6. Wittig said that Koupal would be giving the executives information about their suggested contributions and that they should give their contribution checks to Koupal. *See id.*

The chart that Koupal created at Wittig’s direction listed four federal candidates – Jim Ryun, Dennis Moore, Todd Tiahrt, and Jerry Moran – and five local and state candidates. *See Chart*, Westar Special Report, Exh. 239. Koupal listed the six Executive Council members by their initials, including Wittig and Lake, and wrote in a proposed contribution amount for each executive to give to the candidate committees. *See id.* Koupal showed the chart to Wittig, and Wittig indicated changes to be made for some of the proposed contribution amounts. *See Koupal Affidavit*, ¶ 5. After Koupal incorporated Wittig’s changes, Koupal distributed the chart to Wittig, Lake and the other executives and, except for Lake, communicated in person or over the phone with the executives to tell them how and when to write their checks. *See id.*, ¶ 8.

⁵ The Westar PAC was not active at this time.

Pursuant to a request by Lake, Koupal wrote a memorandum to Lake, dated September 20, 2000, listing the four federal candidate committees. *See id.*, ¶ 11 and Koupal Memorandum, Westar Sua Sponte, Attachment 10. In the memorandum, Koupal told Lake, "Please return these checks and we'll deliver them together." *See* Koupal Memorandum and Koupal Affidavit, ¶ 11. On or about September 26, 2000, Lake on his own behalf wrote sequential contribution checks to the federal candidate committees listed in Koupal's September 20 memorandum for the exact amounts requested. Lake forwarded the checks, totaling \$3,000, to Koupal. *See* Koupal Affidavit, ¶ 12. Lake, Wittig, and the other executives, except for Koupal, wrote contribution checks to all the federal candidates listed on the chart in the amounts suggested. According to Westar's internal investigation, "some officers felt pressured to contribute, and were of the view that Mr. Wittig had let it be known that he wanted officers to contribute when Mr. Koupal came to ask." *See* Westar Special Report, p. 344.

As part of the September 2000 solicitation effort, Koupal collected contribution checks from Wittig, Lake, and the other Executive Council members and sent the checks to the candidate committees. *See* Koupal CA, Part IV, ¶ 9. Disclosure reports show that Westar executives and/or their spouses made the following contributions in accordance with the 2000 contributions schedule:

DATE OF CONTRIBUTION	AMOUNT	RECIPIENT COMMITTEE
10/16/00	\$1,000	Jim Ryun for Congress
10/16/00	\$2,000 ⁶	Jim Ryun for Congress
10/16/00	\$ 750	Jim Ryun for Congress
10/16/00	\$ 500	Jim Ryun for Congress
10/24/00	\$ 500	Dennis Moore for Congress
10/24/00	\$1,000	Dennis Moore for Congress
10/24/00	\$ 750	Dennis Moore for Congress

⁶ This \$2,000 contribution from Wittig on October 16 exceeded contribution limits by \$1,000; on November 1, it was reattributed by the recipient committee as a \$1,000 contribution from Wittig and a \$1,000 contribution from Wittig's wife.

DATE OF CONTRIBUTION	AMOUNT	RECIPIENT COMMITTEE
10/24/00	\$ 500	Dennis Moore for Congress
10/26/00	\$ 500	Jim Ryun for Congress
10/27/00	\$ 500	Tiahrt for Congress
10/27/00	\$ 500	Tiahrt for Congress
10/27/00	\$1,000	Tiahrt for Congress
10/27/00	\$ 500	Tiahrt for Congress
11/04/00	\$ 250	Moran for Kansas
11/04/00	\$ 500	Moran for Kansas
11/04/00	\$ 250	Moran for Kansas
11/04/00	\$ 250	Moran for Kansas
11/04/00	\$ 250	Moran for Kansas
TOTAL	\$11,500	

In response to the September 2000 solicitation, Wittig and Lake forwarded checks earmarked for federal candidate committees totaling \$3,500 and \$3,000, respectively, to Koupal. In total, the September 2000 solicitation resulted in \$11,500 in political contributions from Westar executives that Koupal collected and forwarded as earmarked contribution checks to federal candidate committees.

B. 2002 Solicitations

In an April 23, 2002, memorandum to Governmental Affairs Vice President Douglass Lawrence, Koupal's successor at Westar, titled "Federal Elections Participation," lobbyist Richard Bornemann outlined a proposal "to develop a significant and positive profile for the Company's federal presence." See Bornemann Memorandum, *available at* http://www.house.gov/ethics/DeLay_pdfs/Exhibit%20K.pdf (April 23, 2002). In the memorandum, he recommended that Westar employees contribute specific amounts to certain federal political committees. See *id.* In total, Bornemann recommended that Westar employees, through individual contributions, contribute \$31,500 in federal funds. Bornemann also recommended that Westar contribute \$25,000 in nonfederal funds. See *id.*

1 Using the Bornemann memorandum as a guide, Wittig created a contributions schedule
2 that called for 13 Westar executives, including himself and Lake, to make specific contributions
3 to specific federal candidate committees. *See* Lawrence CA, Part IV, ¶ 9. The suggested
4 contribution amounts were based on the executive's pay grade, with higher-salaried executives
5 requested to contribute proportionally more than lower-salaried executives. *See id.* In a May 3,
6 2002, memorandum to Lake and the other executives on company letterhead, Wittig stated, "We
7 are going to enter the donation season (particularly political), which will require us to write
8 some checks. The attached Donation Schedule is a guideline of how we might share the
9 responsibility."

10 Thereafter, Lawrence, at Wittig's direction, communicated via email, internal mail and
11 orally with Lake and the other solicited executives to let them know to whom they should write
12 contribution checks and the specific amounts within the monetary framework set by Wittig. *See*
13 Lawrence CA, Part IV, ¶ 10. In a June 25, 2002, memorandum to Wittig, Lake and the other
14 executives, Lawrence set forth another round of suggested contribution amounts, explaining
15 how the contribution checks delivered up to that time had successfully resulted in favorable
16 legislative action for Westar and why "the next round of checks" were important to the
17 company's financial restructuring plans.⁷ *See* Lawrence Memorandum, *available at*
18 http://www.house.gov/ethics/DeLay_pdfs/Exhibit%20N.pdf (June 25, 2002).

19 At least through October 18, 2002, Lawrence (and/or his assistant at his direction)
20 collected the executives' contributions, including Wittig and Lake's checks. *See* Lawrence CA,
21 Part IV, ¶ 11. Lawrence then forwarded the checks to the recipient committees, sometimes
22 directly by mail and other times through Bornemann, who then would deliver them to the

recipient committees in person or by mail. *See id.* After October 18, 2002, on the advice of counsel, Westar executives, including Wittig and Lake, began sending their contributions directly to candidate committees by Federal Express, U.S. mail, or other mail service at Westar's expense. *See id.* Westar executives and the spouses of two of the executives made the following contributions from May 31, 2002, through December 19, 2002, which were either collected and forwarded to candidates by Lawrence and/or Bornemann, or sent by the executives by Federal Express or U.S. mail at Westar's expense:

DATE OF CONTRIBUTION	AMOUNT	RECIPIENT COMMITTEE
05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$ 300	Tom Young for Congress
05/31/02	\$ 300	Tom Young for Congress
05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$ 400	Tom Young for Congress
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/06/02	\$1,000	Tom DeLay Congressional Committee
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/06/02	\$ 200	Tom DeLay Congressional Committee
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/10/02	\$ 500	Northup for Congress
06/10/02	\$ 350	Northup for Congress
06/20/02	\$1,000	Volunteers for Shimkus
06/28/02	\$1,000	Graves for Congress
06/30/02	\$ 350	Shelley Moore Capito for Congress
06/30/02	\$ 650	Shelley Moore Capito for Congress
07/31/02	\$1,000	Bayou Leader PAC
07/31/02	\$ 300	Bayou Leader PAC
07/31/02	\$1,000	Bayou Leader PAC
07/31/02	\$ 500	Bayou Leader PAC
10/18/02	\$1,000	Next Century Fund
10/23/02	\$ 500	NRCCC
10/23/02	\$ 425	NRCCC
10/23/02	\$ 225	NRCCC

⁷ According to Bornemann's memorandum, most of the suggested contribution recipients were either members of or had ties to leaders of the Senate and House energy committees

DATE OF CONTRIBUTION	AMOUNT	RECIPIENT COMMITTEE
10/25/02	\$ 500	Simmons for Congress
10/28/02	\$1,000	Oxley for Congress
10/28/02	\$ 500	Texas Freedom Fund
10/28/02	\$ 500	Texas Freedom Fund
10/28/02	\$ 500	Hayes for Congress
10/29/02	\$ 500	Hayes for Congress
10/29/02	\$ 325	Leadership PAC
10/29/02	\$ 675	Leadership PAC
10/29/02	\$ 500	Latham for Congress
10/29/02	\$ 250	Latham for Congress
10/29/02	\$ 250	Latham for Congress
10/30/02	\$ 500	Simmons for Congress
10/30/01	\$1,000	Team Sununu
10/31/02	\$1,000	The Congressman Joe Barton Committee
11/03/02	\$1,000	Team Sununu
11/04/02	\$1,000	Team Sununu
11/05/02	\$1,000	The Congressman Joe Barton Committee
12/19/02	\$1,000	Texas Freedom Fund
TOTAL	\$28,400	

Wittig made 10 of these contributions, totaling \$9,000, in response to the 2002 solicitations. Lake made seven of these contributions, totaling \$6,300. When considered with the \$11,500 in contributions forwarded in 2000, *see supra* pp. 5-6, contributions solicited and delivered by Westar executives and agents or sent using Westar resources totaled \$39,900 between September 2000 and December 2002.

IV. LEGAL ANALYSIS

In 2000 and 2002, Westar embarked on two organized efforts to make contributions to federal candidate committees. These efforts went beyond permissible communications to its restricted class concerning recommended candidates and/or contribution suggestions. *See* 11 C.F.R. § 114.3(a)(1). Acting by and through Wittig, Lake, and other corporate officers and agents, Westar collected earmarked contributions and forwarded them to federal candidate committees. In using corporate resources and facilities to engage in fundraising activities,

Westar facilitated the making of prohibited corporate contributions totaling \$39,900. *See* 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 114.2(f)(1) and 114.2(f)(2)(ii). Section 441b(a) also prohibits corporate officers and directors from consenting to any corporate contribution in connection with any Federal election,⁸ and Commission regulations specifically prohibit officers and directors from facilitating corporate contributions. *See* 11 C.F.R. § 114.2(f).

A. Wittig Consented to Corporate Facilitation by Westar

Wittig, Westar's top corporate officer during the relevant time period, consented to the prohibited corporate facilitation of contributions to federal candidates. Wittig not only knew that Westar employees or agents were collecting executives' contribution checks and forwarding them to candidate committees, he directed his subordinates, Koupal and Lawrence, to do so as part of their jobs. *See supra*, pp. 3-9. He, in fact, instigated the 2000 effort and determined which executives would be solicited and how much they would be asked to contribute. He also made contributions himself and gave his earmarked checks to Koupal or Lawrence for them to forward to the candidate committee or to Bornemann. In addition, Wittig forwarded his own contribution checks to candidate committees using Westar's mailing facilities. Based on these facts, Wittig undoubtedly knew about Westar's facilitation. *See* Koupal Affidavit, ¶ 13.

Wittig argues that he did not violate any campaign finance laws or regulations for several reasons: Westar executives were not required to make any campaign contributions; Westar executives were not reimbursed for the contributions they made; he did not play any role in collecting or distributing contributions; his contributions were personal; and he did not direct anyone to use corporate funds or property to facilitate campaign contributions. *See* MUR 5573,

⁸ *See, e.g.*, MUR 4621 (Merrill Cook), Conciliation Agreement at 9, 11 (liable as officer for consenting to corporate in-kind contributions), and MUR 4884 (Leonard Keller) Conciliation Agreement, at 7-8 (liable as officer for consenting to corporation making contribution in the name of another).

1 Wittig Response, Jan. 18, 2005, pp. 2-3. Moreover, he adopts Vice Chairman Toner's view that
2 Westar's contribution activities fall within a safe harbor in the Commission regulations. *See*
3 MUR 5657, Wittig Response, October 21, 2005, p. 1; *see also* 11 C.F.R. § 114.9 (corporate
4 employees may make occasional, isolated, or incidental use of corporate facilities for individual
5 volunteer activity in connection with a Federal election).

6 Wittig does not address his liability as a consenting officer. *See* 2 U.S.C. § 441b(a) and
7 11 C.F.R. § 114.2(f). Most of his arguments do not address or adequately refute the
8 Commission's allegations that Westar and its employees and agents collected executives'
9 earmarked contributions and forwarded them together to federal candidate committees, and that
10 Westar executives also used Westar resources to send contributions checks. The Commission
11 has not alleged that Westar facilitated contributions through coercion or that executives were
12 reimbursed for their contributions. His argument that he did not direct anyone to use "corporate
13 funds or property" to facilitate contributions does not address the evidence that he directed
14 Koupal and Lawrence to collect earmarked contributions intended for candidates whom he
15 wanted Westar to support and who could be of help to Westar. His argument contradicts the
16 Westar Special Report, admissions by Lawrence, and a sworn affidavit by Koupal.

17 In sum, the evidence establishes that Westar facilitated corporate contributions and that
18 Wittig consented to it. Therefore, this Office recommends that the Commission find probable
19 cause to believe that Wittig violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f).

20 **B. Lake Consented to Corporate Facilitation by Westar**

21 Lake also consented to Westar's facilitation of prohibited contributions. Lake, as
22 Westar's Vice President of Corporate Strategy and one of the solicited executives, knew of the
23 2000 and 2002 plans to collect earmarked contribution checks from Westar executives and

1 deliver them to candidate committees. *See supra*, pp. 4-9. Moreover, Lake delivered his own
2 checks to Koupal and Lawrence, knowing that the checks would be forwarded to the intended
3 recipients. Lake also used corporate resources to send his own contributions to candidate
4 committees after Westar stopped forwarding checks.

5 In his response to the Brief, which incorporates by reference his response to the
6 Commission's reason to believe findings, Lake argues that he had no role in "conceiving of,
7 directing, organizing, collecting, or sending any donations." *See Lake Response*, at 1. He further
8 argues that he was never reimbursed for the donations he made, never used corporate assets in
9 making any donation, played no role in soliciting other Westar executives for a donation, and did
10 not supervise Koupal or Lawrence. *See id.*, at 1-2. Lake also claims to have no "firsthand
11 knowledge" of how the contributions were collected and distributed. *See id.*, at 2.

12 Lake acknowledges, however, that he discussed his donations with Lawrence, "to whom
13 he provided the checks." *See id.* Moreover, he was present at the meeting where Wittig
14 explained the 2000 contributions plan, including giving the direction to give checks to Koupal.
15 *See supra*, p. 4. He also received memoranda from Koupal and Lawrence telling him and the
16 other executives to return contribution checks to them so that the checks could be forwarded
17 together to candidate committees. *See supra*, pp. 4-5. In addition, Lake does not deny that he
18 used Westar facilities to mail his own checks after organized collection and forwarding stopped.
19 Based on these facts, it is apparent that Lake knew about Westar's facilitation. *See Koupal*
20 *Affidavit*, at ¶ 14. Thus, as an officer, Lake is liable under the Act because he consented to
21 Westar's facilitation of corporate contributions. *See 2 U.S.C. § 441b(a)*. Therefore, this Office
22 recommends that the Commission find probable cause to believe that Lake violated 2 U.S.C.
23 § 441b(a) and 11 C.F.R. § 114.2(f) of the Act.

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V. CONCILIATION

VI. RECOMMENDATIONS

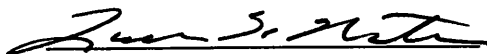
1. Find probable cause to believe that David Wittig violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f).
2. Find probable cause to believe that Douglas Lake violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f).

3.

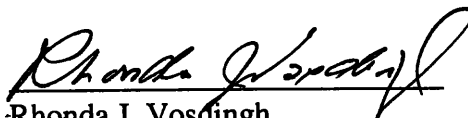
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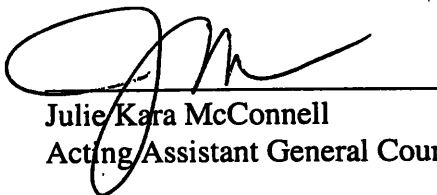
Date



Lawrence H. Norton
General Counsel



Rhonda J. Vosdingh
Associate General Counsel for Enforcement



Julie Kara McConnell
Acting Assistant General Counsel



Elena Paoli
Attorney

Attachments:

1. David Wittig's response to the GC Brief
2. Douglas Lake's response to the GC Brief
3. Affidavit of Carl M. Koupal, Jr.
- 4.
- 5.

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October 21, 2005

VIA HAND DELIVERY

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: David Wittig, MUR 5657

Dear Mr. Norton:

This letter is in response to your September 1, 2005 letter, informing Mr. Wittig that the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that he violated Federal Election Commission regulations. We have carefully reviewed your letter and the attached General Counsel's Brief, which describe your allegations against Mr. Wittig. For the reasons described in our January 18, 2005 letter to FEC Chairman Smith, we believe that there is no factual or legal basis sufficient to establish that Mr. Wittig violated any campaign finance laws or regulations. Additionally, we incorporate by reference Vice Chairman Michael E. Toner's Statement of Reasons in In the Matter of Westar Energy, Inc., including his conclusion that "OGC's standard is an overly broad theory of corporate facilitation" and that the actions of Westar Energy, Inc. fall under the safe harbor provision of the FEC regulations.

As you may know, Mr. Wittig is currently involved in an ongoing criminal proceeding in the United States District Court for the District of Kansas. This law firm represents Mr. Wittig in those proceedings. At this time, we anticipate that the proceedings in the District Court will continue until January or February 2006. Accordingly, we request that the FEC stay this

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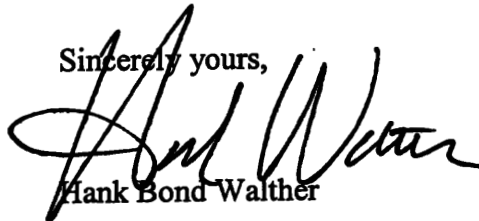
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**DLA PIPER RUDNICK
GRAY CARY**

Lawrence H. Norton, Esq.
October 21, 2005
Page 2

proceeding until March 2006, when the criminal proceedings in the District Court have been completed and Mr. Wittig, along with his counsel, can devote their full attention to this matter.

Sincerely yours,



Hank Bond Walther

/hbw

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Attachment 1
Page 2 of 2

Hughes Hubbard & Reed LLP

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October 11, 2005

VIA TELECOPY

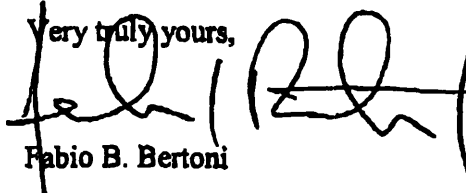
Elena Paoli, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5657

Dear Ms. Paoli:

I write in response to the General Counsel's brief in this matter. Mr. Lake stands by the legal arguments and authority set forth in our letter to Bradley A. Smith dated January 18, 2005 in this matter. Mr. Lake denies that he violated any laws or rules regarding federal elections, and respectfully urges that the Commission take no action against him.

Very truly yours,



Fabio B. Bertoni

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Attachment 2
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BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF)

) MUR 5657
)

DECLARATION OF CARL M. KOUPAL, JR.

I, Carl M. Koupal, Jr., say as follows in connection with the Federal Election Commission's investigation in Matter Under Review 5657:

1. My name is Carl M. Koupal, Jr. I reside in Topeka, Kansas, and am currently a bank president.
2. From September 2000 until October 2001, I was the Executive Vice President and Chief Administrative Officer at Westar Energy, Inc. My responsibilities included overseeing governmental affairs, human resources, regulatory affairs and corporate communications. I reported to CEO David Wittig.
3. I was a member of Westar's Executive Council, which was comprised of the top six executives at Westar, including David Wittig and Doug Lake.
4. In late August or early September 2000, Wittig asked me to prepare a list of federal, state and local candidates for the Executive Council members to support and to propose suggested contribution amounts for the executives. This was the first time Wittig asked me to prepare such a document. I believe that the timing had to do with the fact that the Westar PAC, which used to contribute to candidate committees, was no longer active and Wittig wanted participation by senior management in the current campaigns for the general election.
5. Accordingly, I created a proposed contributions schedule for the Westar executives, including myself, Wittig and Lake. I presented the chart to Wittig for his approval, and he modified some of the contribution amounts. I incorporated Wittig's edits into the chart.
6. At around the same time, Wittig brought up the subject of political contributions at one of the regular Monday Executive Council meetings. I do not remember whether the chart existed when this particular meeting took place. At the meeting, Wittig announced that he had asked me to prepare a proposed contributions schedule for candidates to support in the upcoming elections. Wittig said that the document would have suggested contribution amounts and that I would be getting in touch with each executive about his or her suggested contributions. Wittig also announced to the executives that the contribution checks should be given to me. Doug Lake attended this meeting.

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7. Wittig never said that the contributions were mandatory, but at the meeting he emphasized that we needed to be involved in supporting these candidates.
 8. When the chart was finalized, I gave a copy to each executive, including Wittig and Lake. Except for Lake, I talked to the executives in person to let them know when to write the checks and to whom to write the checks.
 9. The five Executive Council executives gave me their checks, and I sent them to the candidate's campaign offices or delivered them in person at a candidate's local fundraising event.
 10. The suggested contribution amounts varied depending on whether the candidate was perceived to have a tough general election race. Larger amounts were given as a matter of course to Ryun and Tiaht, who represented the districts where Westar had its headquarters (Topeka) and its other big office (Wichita).
 11. Lake was not present at Westar's offices in Kansas very often. Per Lake's request, I wrote him a memorandum dated Sept. 20, 2000, which listed the candidate committees to which Lake was being asked to make a contribution. In the memorandum, the committee names are written out in full; the contributions chart that I prepared and that Lake had previously received did not have the full committee names written out. In the memorandum, I also asked Lake to return the checks to me so that I could deliver his checks together with the contribution checks written by the other Westar executives.
 12. Shortly after sending Lake the memorandum, I received an envelope from him with contribution checks.
 13. I am certain that Wittig knew that I was collecting contribution checks from the Westar executives and delivering their contribution checks in a bundle to the candidates. The basis for my opinion is that (1) Wittig instigated the contributions plan, after the demise of the PAC, by telling the executives that he wanted the company to support these candidates; (2) he directed me to create the candidate list and come up with suggested contribution amounts for the executives; (3) he edited the contribution amounts; (4) he announced at the staff meeting that I would be creating such a list, that I would be in touch with the executives about their suggested contribution amounts, and that the executives should give their checks to me; and (5) Wittig gave his own checks to me for delivery to the candidate committees.
 14. Similarly, I am certain that Lake knew that I was collecting, bundling and delivering the Westar executives' contribution checks to the candidate committees. The basis for my opinion is that (1) Lake was at the meeting when Wittig announced the contributions effort; (2) per Lake's request, I wrote him the Sept. 20, 2000, memorandum listing the candidate committees,

with their full names written out, to which Lake was being asked to write checks; (3) Lake received a copy of the contributions schedule showing the amounts he and the other executives were being asked to contribute; (4) my memorandum to Lake told him to write the checks and get them to me so that "we" can deliver them together; and (5) Lake wrote all of the checks requested in the amounts requested of him and sent them to me on the same day.

I declare under penalty of perjury that the foregoing is true and correct.

Dated 22 August 2005



Carl M. Koupa, Jr.

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